

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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JOYCE ZAIC,

Plaintiff,

V.

MICHAEL GIDDENS, an individual, and
TIMOTHY WALL, an individual,

Defendants.

Case No. 2:14-cv-00892-APG-PAL

ORDER GRANTING DEFENDANTS' MOTION FOR SANCTIONS

(ECF No. 55)

ORDER DENYING AS MOOT ZAIC'S MOTION TO STAY DISCOVERY

(ECF No. 53)

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR RECONSIDERATION

(ECF No. 48)

Plaintiff Joyce Zaic sued College of Southern Nevada police officers Michael Giddens and Timothy Wall for Fourth and Fourteenth Amendment violations arising from her 2012 arrest. The defendants move for case-ending sanctions based on Zaic's failure to comply with the court's discovery timeline. Zaic moves to stay discovery. In the alternative, the defendants move for reconsideration of Judge Boulware's order granting in part and denying in part their motion to dismiss and denying their motion for summary judgment.

I find that Zaic did not comply with the discovery process in good faith, despite a warning from Judge Boulware that failure to do so could result in dismissal of the case. I therefore grant the defendants' motion for case-dispositive sanctions. I deny Zaic's motion to stay discovery as moot. To correct the record regarding a point of law in the prior order, I grant in part and deny in part the defendants' motion for reconsideration.

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1 **I. BACKGROUND**

2 I adopt the factual and procedural background described by Judge Boulware in his prior
3 order. ECF No. 46. In that order, Judge Boulware wrote,

4 discovery shall reopen for 60 days until October 24, 2016. Written
5 discovery must be propounded by September 6, 2016 and responded
6 to by September 20, 2016. . . . All depositions must be noticed by
7 September 30, 2016 and scheduled to be completed within the
8 discovery period. . . . If Plaintiff does not properly engage in
discovery in good faith the Court may issue case-dispositive
sanctions.

9 *Id.* at 10.

10 **II. DEFENDANTS' MOTION FOR SANCTIONS**

11 The defendants move to dismiss the case because Zaic failed to comply with Judge
12 Boulware's discovery order. "If a party . . . fails to obey an order to provide . . . discovery, . . .
13 the court . . . may . . . (v) dismiss[] the action or proceeding in whole or in part." Fed. R. Civ. P.
14 37(b)(2)(C).

15 The defendants contend that despite Judge Boulware's warnings, Zaic failed to engage in
16 good faith in the discovery process that Judge Boulware laid out. Zaic refused to consent to be
17 contacted by the defendants' counsel by telephone or email, instead requiring that discovery
18 communications be sent to a post office box that she designated for this case. ECF No. 57 at 6.
19 Zaic then neglected to pick up at least five documents from that box, which caused the
20 documents to be returned as "undeliverable." *Id.* at 2. Zaic failed to appear at her scheduled
21 deposition, and she never told the defendants she would not attend or was unavailable. ECF No.
22 55 at 4. Because of Zaic's dilatory tactics, the 60-day discovery period elapsed with important
23 issues unresolved. *Id.* at 5.

24 Judge Boulware held a hearing on January 26, 2017 on all three motions at issue in this
25 order, but recused himself before he could issue a decision. As to the failure to pick up the

1 documents the defendants sent, Zaic vacillated as to whether she had picked up the documents,¹
2 but concluded that it was unimportant because she could access them through PACER. Judge
3 Boulware responded that many documents are not filed in PACER, which Zaic should have
4 known given her over two years of experience in this lawsuit. Asked why she failed to attend her
5 scheduled deposition, Zaic stated she wanted discovery put on hold while the court considered
6 the defendants' motion for reconsideration. Judge Boulware responded that Zaic was not entitled
7 to unilaterally stay discovery without an order from the court, which he had not issued.

8 I agree with Judge Boulware that Zaic's explanations for her conduct in the discovery
9 process are inadequate. This is especially true given that Zaic was put on notice to comply with
10 Judge Boulware's discovery timeline in good faith because of her earlier failures to comply with
11 discovery rules. Judge Boulware also notified Zaic that he would likely dismiss the case if she
12 did not comply. I therefore find that dismissal is just and appropriate under Rule 37(b)(2)(C).

13 III. ZAIC'S MOTION TO STAY DISCOVERY

14 Because I grant the defendants' motion for case-dispositive sanctions, Zaic's motion to
15 stay discovery is moot.

16 IV. DEFENDANTS' MOTION FOR RECONSIDERATION

17 The defendants move for reconsideration of Judge Boulware's order granting in part and
18 denying in part their motion to dismiss and denying their motion for summary judgment. In their
19 motion for reconsideration, the defendants argue first that the order wrongly discusses the
20 conduct of an unknown defendant "Officer Higgins" who lied that he had served Zaic with the
21 order to show cause when he had not. Second, they argue Zaic's complaint does not describe
22 "judicial deception," so it was inappropriate for the court to introduce the allegation as grounds
23 for stripping defendant Giddens of qualified immunity. Third, the defendants argue that the
24 order misconstrues Nevada law to hold that officers may break down a door only during a felony

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27 ¹ The defendants provided time-stamped copies of the correspondence, marked "return to
28 sender." ECF No. 57 at 15.

1 arrest, whereas the law actually says the felony limitation applies only to “private persons,” not
2 officers.

3 From the overall opinion, it is clear that the name “Higgins” in the order was a
4 typographical error that should have read “Giddens,” who is a defendant in the case and who
5 Zaic alleges committed the conduct described. Also, Zaic’s allegations that Giddens lied about
6 serving her, which robbed her of the opportunity to show cause why she was not in violation of
7 the restraining order against her, describes judicial deception. *See Branch v. Tunnell*, 937 F.2d
8 1382, 1387 (9th Cir. 1991) (stating that “if an officer submitted an affidavit that contained
9 statements he knew to be false or would have known were false had he not recklessly
10 disregarded the truth . . . he cannot be said to have acted in an objectively reasonable manner,
11 and the shield of qualified immunity is lost”).

12 The defendants are, however, correct that Nevada law permits an officer to break open a
13 door or window to make an arrest “in all cases.” Nev. Rev. Stat. 171.138. I therefore grant the
14 motion for reconsideration on the limited question of law that the statute was not grounds for
15 removing Wall’s qualified immunity. I do not decide whether Wall would have had the benefit
16 of qualified immunity if this case had moved forward.

17 **V. CONCLUSION**

18 IT IS THEREFORE ORDERED that the defendants’ motion for sanctions (**ECF No. 55**)
19 is **GRANTED**. The case is dismissed without prejudice.

20 IT IS FURTHER ORDERED that Zaic’s motion to stay discovery (**ECF No. 53**) is
21 **DENIED** as moot.

22 IT IS FURTHER ORDERED that the defendants’ motion for reconsideration (**ECF No.**
23 **48**) is **GRANTED IN PART AND DENIED IN PART** as set forth above.

24 DATED this 23rd of May, 2017.

25 
26 ANDREW P. GORDON
27 UNITED STATES DISTRICT JUDGE
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